

Calendar No. 65

106TH CONGRESS
1ST SESSION**S. 422****[Report No. 106-28]**

To provide for Alaska state jurisdiction over small hydroelectric projects.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 1999

Mr. MURKOWSKI introduced the following bill; which was read twice and
referred to the Committee on Energy and Natural Resources

MARCH 19, 1999

Reported by Mr. MURKOWSKI, with an amendment

[Insert the part printed in italic]

A BILLTo provide for Alaska state jurisdiction over small
hydroelectric projects.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ALASKA STATE JURISDICTION OVER SMALL HY-**
 4 **DROELECTRIC PROJECTS.**

5 Part I of the Federal Power Act (16 U.S.C. 792 et
 6 seq.) is amended by adding at the end the following:

1 **“SEC. 32. ALASKA STATE JURISDICTION OVER SMALL HY-**
 2 **DROELECTRIC PROJECTS.**

3 “(a) DISCONTINUANCE OF REGULATION BY THE
 4 COMMISSION.—Notwithstanding sections 4(e) and 23(b),
 5 the Commission shall discontinue exercising licensing and
 6 regulatory authority under this Part over qualifying
 7 project works in the State of Alaska, effective on the date
 8 on which the Commission certifies that the State of Alaska
 9 has in place a regulatory program for water-power devel-
 10 opment that—

11 “(1) protects the public interest, the purposes
 12 listed in paragraph (2), and the environment to the
 13 same extent provided by licensing and regulation by
 14 the Commission under this Part and other applicable
 15 Federal laws, including the Endangered Species Act
 16 (16 U.S.C. 1531 et seq.) and the Fish and Wildlife
 17 Coordination Act (16 U.S.C. 661 et seq.);

18 “(2) gives equal consideration to the purposes
 19 of—

20 “(A) energy conservation;

21 “(B) the protection, mitigation of damage
 22 to, and enhancement of, fish and wildlife (in-
 23 cluding related spawning grounds and habitat);

24 “(C) the protection of recreational oppor-
 25 tunities,

1 “(D) the preservation of other aspects of
2 environmental quality,

3 “(E) the interests of Alaska Natives, and

4 “(F) other beneficial public uses, including
5 irrigation, flood control, water supply, and navi-
6 gation; and

7 “(3) requires, as a condition of a license for any
8 project works—

9 “(A) the construction, maintenance, and
10 operation by a licensee at its own expense of
11 such lights and signals as may be directed by
12 the Secretary of the Department in which the
13 Coast Guard is operating, and such fishways as
14 may be prescribed by the Secretary of the Inte-
15 rior or the Secretary of Commerce, as appro-
16 priate;

17 “(B) the operation of any navigation facili-
18 ties which may be constructed as part of any
19 project to be controlled at all times by such rea-
20 sonable rules and regulations as may be made
21 by the Secretary of the Army; and

22 “(C) conditions for the protection, mitiga-
23 tion, and enhancement of fish and wildlife
24 based on recommendations received pursuant to
25 the Fish and Wildlife Coordination Act (16

1 U.S.C. 661 et seq.) from the National Marine
 2 Fisheries Service, the United States Fish and
 3 Wildlife Service, and State fish and wildlife
 4 agencies.

5 “(b) DEFINITION OF ‘QUALIFYING PROJECT
 6 WORKS’.—For purposes of this section, the term ‘quali-
 7 fying project works’ means project works—

8 “(1) that are not part of a project licensed
 9 under this Part or exempted from licensing under
 10 this Part or section 405 of the Public Utility Regu-
 11 latory Policies Act of 1978 prior to the date of en-
 12 actment of this section;

13 “(2) for which a preliminary permit, a license
 14 application, or an application for an exemption from
 15 licensing has not been accepted for filing by the
 16 Commission prior to the date of enactment of sub-
 17 section (c) (unless such application is withdrawn at
 18 the election of the applicant);

19 “(3) that are part of a project that has a power
 20 production capacity of 5,000 kilowatts or less;

21 “(4) that are located entirely within the bound-
 22 aries of the State of Alaska; and

23 “(5) that are *not* located in whole or in part on
 24 any Indian reservation, a conservation system unit
 25 (as defined in section 102(4) of the Alaska National

1 Interest Lands Conservation Act (16 U.S.C.
2 3102(4))), or segment of a river designated for
3 study for addition to the Wild and Scenic Rivers
4 System.

5 “(c) ELECTION OF STATE LICENSING.—In the case
6 of nonqualifying project works that would be a qualifying
7 project works but for the fact that the project has been
8 licensed (or exempted from licensing) by the Commission
9 prior to the enactment of this section, the licensee of such
10 project may in its discretion elect to make the project sub-
11 ject to licensing and regulation by the State of Alaska
12 under this section.

13 “(d) PROJECT WORKS ON FEDERAL LANDS.—With
14 respect to projects located in whole or in part on a reserva-
15 tion, a conservation system unit, or the public lands, a
16 State license or exemption from licensing shall be subject
17 to—

18 “(1) the approval of the Secretary having juris-
19 diction over such lands; and

20 “(2) such conditions as the Secretary may pre-
21 scribe.

22 “(e) CONSULTATION WITH AFFECTED AGENCIES.—
23 The Commission shall consult with the Secretary of the
24 Interior, the Secretary of Agriculture, and the Secretary

1 of Commerce before certifying the State of Alaska's regu-
2 latory program.

3 “(f) APPLICATION OF FEDERAL LAWS.—Nothing in
4 this section shall preempt the application of Federal envi-
5 ronmental, natural resources, or cultural resources protec-
6 tion laws according to their terms.

7 “(g) OVERSIGHT BY THE COMMISSION.—The State
8 of Alaska shall notify the Commission not later than 30
9 days after making any significant modification to its regu-
10 latory program. The Commission shall periodically review
11 the State's program to ensure compliance with the provi-
12 sions of this section.

13 “(h) RESUMPTION OF COMMISSION AUTHORITY.—
14 Notwithstanding subsection (a), the Commission shall re-
15 assert its licensing and regulatory authority under this
16 Part if the Commission finds that the State of Alaska has
17 not complied with one or more of the requirements of this
18 section.

19 “(i) DETERMINATION BY THE COMMISSION.—

20 “(1) Upon application by the Governor of the
21 State of Alaska, the Commission shall within 30
22 days commence a review of the State of Alaska's
23 regulatory program for water-power development to
24 determine whether it complies with the requirements
25 of subsection (a).

1 “(2) The Commission’s review required by
2 paragraph (1) shall be completed within one year of
3 initiation, and the Commission shall within 30 days
4 thereafter issue a final order determining whether or
5 not the State of Alaska’s regulatory program for
6 water-power development complies with the require-
7 ments of subsection (a).

8 “(3) If the Commission fails to issue a final
9 order in accordance with paragraph (2), the State of
10 Alaska’s regulatory program for water-power devel-
11 opment shall be deemed to be in compliance with
12 subsection (a).”.

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